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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,792	08/13/2001	Keith E. Olson	163.1213US01	8268
23552	7590	11/04/2005	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			HARDEE, JOHN R	
			ART UNIT	PAPER NUMBER
			1751	
DATE MAILED: 11/04/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/928,792

Applicant(s)

OLSON ET AL.

Examiner

John R. Hardee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6, 10, 14-17, 20 and 28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 10, 14-17, 20 and 28 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 24, 2005 has been entered.

Election/Restrictions

2. The species election is withdrawn.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-4, 6, 10, 14-17, 20 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miracle et al., US 5,576,282. The reference discloses bleaching compositions which may be formulated as granular or powder form laundry detergents, or they may be tabletted or granular automatic dishwashing detergents (col. 11, lines 30+). Highly preferred compositions comprise about 5% to about 80% of surfactants (col. 10, lines 5-7). The compositions typically comprise builders, such as tripolyphosphates, carbonates, bicarbonates and sesquicarbonates (col. 12, lines 18+). Use of phosphonates is specifically disclosed at col. 12, line 32 and col. 14, lines 34+.

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Aminocarboxylate chelants (builders) are disclosed at col. 20, lines 5+. Addition of citric acid is disclosed at col. 13, line 64. Solid compositions typically comprise 10-80% of builders. Use of combinations of ingredients, each disclosed as being used for the same purpose, is obvious, absent unexpected results. Preferred detergent compositions comprise mixtures of nonionic and anionic surfactants (col. 10, lines 10+). Addition of enzymes is disclosed at col. 9, line 61. The compositions can be formulated in any mixing, densifying and granulating equipment that is currently available. Use of an aqueous slurry is disclosed at col. 30, lines 35+. This makes obvious the use of water to bring about reaction of carbonate and bicarbonate, and anything dried out of an aqueous slurry would perforce be hardened. Where citric acid and carbonate are slurried together, acid-base chemistry, resulting in the production of bicarbonate or sesquicarbonate would ensue, in the absence of evidence to the contrary. The examiner takes the position that extruders are commonly used mixing equipment in the surfactant art. Packaging of detergent compositions is standard practice and therefore an obvious expedient. This reference differs from the claimed subject matter in that it does not disclose a composition which reads on applicant's claims with sufficient specificity to constitute anticipation.

It would have been obvious at the time the invention was made to make such a composition, because this reference teaches that all of the ingredients recited by applicants are suitable for inclusion in a solid detergent composition. The person of ordinary skill in the surfactant art would expect the recited compositions to have properties similar to those compositions which are exemplified, absent a showing to the

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contrary. Regarding the "20 minute" limitations, these recite the physical properties of the compositions. As the material limitations of the recited compositions can be met by following the teachings of the reference, it would appear that the physical limitations would or could follow inherently. It is well settled that the properties of a composition are not separable from its chemical makeup. Carbonates, bicarbonates and sesquicarbonates are clearly water conditioners, as they affect the pH of the compositions into which they are dissolved. Regardless of whether or not the carbonate, bicarbonate, sesquicarbonate and water are being disclosed as builders or binders, their use in the recited percentages is clearly motivated by the teachings of the reference. Furthermore, the Office does not have the facilities to determine physical properties, so it is incumbent upon applicant to show that the prior art compositions necessary do not possess the recited properties.

In the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art, a *prima facie* case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed Cir. 1990).

Response to Arguments

5. Applicant's arguments filed October 24, 2005 have been fully considered but they are not persuasive. Applicant argues that none of the physical forms disclosed by Miracle read on pellets or blocks produced as a result of extrusion. This is not persuasive because Miracle discloses compositions that may be in the form of tablets

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and bars, as admitted by applicant, and because the use of extrusion is obvious over the reference, as any form of mixing equipment may be used. Furthermore, applicant's language regarding extrusion and hardening is product-by-process language which does not add patentable weight in the absence of evidence of unexpected results. In the middle of p. 8 of the response, applicant takes issue with the examiner's reasoning regarding aqueous slurries. To clarify: where disclosed materials are used in a disclosed process, the same chemistry will ensue as was observed by applicant. This will be the case regardless of whether the carbonate and bicarbonate are added as builders or as hardeners.

As a courtesy to applicant, the election requirement has been withdrawn, and the non-elected claims were rejoined and rejected over the reference. As this is a new ground of rejection, this action is NOT FINAL.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (571) 272-1318. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Dr. Yogendra Gupta, may be reached at (571) 272-1316.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "J. Hardee", with a stylized, cursive script.

John R. Hardee

Primary Examiner

November 3, 2005